

Border Surge Response and Resilience Act

Background

The Department of Homeland Security (DHS) does not currently have an effective plan to deal with irregular migration surges at the southwest border and does not have immediate access to supplemental funds when a humanitarian crisis develops.

Currently, U.S. Customs and Border Protection (CBP) is encountering more than 3,500 migrants, on average, per day, which is rapidly approaching levels seen at the height of the 2019 surge. DHS Secretary Mayorkas has said that the numbers are on track to be the highest in 20 years.¹ These numbers are especially alarming given that CBP and Immigration and Customs Enforcement (ICE) holding and processing facilities are operating at less than 30 percent capacity due to COVID-19 constraints. Because of communication and capacity issues within DHS and federal partners, unaccompanied minors are being held in CBP custody for longer than legal requirements.

Over the past few weeks:

- The Federal Emergency Management Agency (FEMA) was activated to assist with the southwest border response.²
- The Department and OPM requested volunteers to go to the southwest border to help facilitate the humanitarian response.³⁴
- Hundreds of Border Patrol Agents were diverted from interior drug checkpoints and the northern and coastal borders to the southwest border to address the crisis.⁵
- The Donna, Texas Border Patrol facility was at more than 1,500% capacity.⁶
- The Department of Health and Human Services (HHS) expanded influx facilities for unaccompanied minors to include Carrizo Springs; Target Lodge Pecos North; the Dallas, San Diego, and San Antonio Convention Centers; Midland; as well as Fort Bliss and Joint Base San Antonio, among others.
- DHS has reportedly released more than 30,000 migrants on their own recognizance.⁷
- DHS has released migrants with COVID-19 into the United States.⁸
- The media has reported that DHS is now giving Border Patrol prosecutorial discretion to release migrants without entering them in removal proceedings.^{9 10}
- DHS is considering flying migrants to the northern border to be processed.¹¹
- Border mayors are calling for help saying their cities are overwhelmed with Federal releases.¹²¹³

¹ *The Way Forward on Homeland Security: U.S. House Committee on Homeland Security*, 117th Cong. (2021) (Testimony of Secretary Alejandro Mayorkas). <https://homeland.house.gov/activities/hearings/the-way-forward-on-homeland-security>

² Hesson, Ted et al. "Biden administration enlists FEMA to help with surge of children at U.S.-Mexico border." Reuters, March 13, 2021. <https://www.reuters.com/article/us-usa-immigration-children/biden-administration-enlists-fema-to-help-with-surge-of-children-at-u-s-mexico-border-idUSKBN2B6014>. Accessed March 14, 2021.

³ Shaw, Adam et al. "DHS chief requests volunteers to help at southern border amid 'overwhelming' migrant surge." Fox News, March 8, 2021. <https://www.foxnews.com/politics/dhs-chief-volunteers-southern-border-migrant-surge>. Accessed March 9, 2021.

⁴ Sands, Geneva. "Federal workers asked to volunteer for 'urgent' border effort amid influx of children." CNN, March 29, 2021.

<https://www.cnn.com/2021/03/29/politics/federal-workforce-to-volunteer-for-urgent-border-effort/index.html>. Accessed March 30, 2021.

⁵ Shaw, Adam et al. "CBP shuts down highway checkpoints as overwhelmed agency struggles to handle border surge" Fox News, March 9, 2021. <https://www.foxnews.com/politics/cbp-shuts-checkpoints-agency-border-surge>. Accessed on March 11, 2021.

⁶ Vega, Cecilia et al. "Biden administration releases video from inside crowded migrant detention facilities." ABC News, March 23, 2021.

<https://abcnews.go.com/Politics/biden-administration-releases-video-inside-crowded-migrant-detention/story?id=76618644>. Accessed March 30, 2021.

⁷ Giaritelli, Anna. "Border Patrol has released 30,000 directly into US since January." Washington Examiner, March 30, 2021.

<https://www.washingtonexaminer.com/news/border-patrol-released-30-000-directly-since-january>. Accessed March 30, 2021.

⁸ *The Way Forward on Homeland Security: U.S. House Committee on Homeland Security*, 117th Cong. (2021) (Testimony of Secretary Alejandro Mayorkas). <https://homeland.house.gov/activities/hearings/the-way-forward-on-homeland-security>

⁹ Right, Stef W. "Rio Grande Valley border patrol releasing migrants without court date." Axios, March 21, 2021, <https://www.axios.com/border-patrol-rio-grande-valley-release-migrant-families-67e8cdc1-d549-47e1-aba3-8baca26025d8.html>. Accessed March 22, 2021.

¹⁰ Jenkins, Griff et al. "Border Patrol in Rio Grande Valley releasing illegal crossers into US without court date." Fox News, March 21, 2021,

<https://www.foxnews.com/politics/border-patrol-in-rio-grande-valley-releasing-illegal-crossers-into-us-without-court-date>. Accessed March 22, 2021.

¹¹ Miroff, Nick. "Biden administration considers flying migrants to states near the Canadian border for processing." Washington Post, March 20, 2021. https://www.washingtonpost.com/national/migrant-families-flights-canadian-border/2021/03/19/7885433c-88da-11eb-8a67-f314e5fcf88d_story.html. Accessed March 22, 2021.

¹² Blitzer, Ronn et al. "Migrant crisis forces Arizona border town to declare 'state of emergency.'" Fox Business, March 23, 2021.

<https://www.foxbusiness.com/politics/migrant-crisis-arizona-border-town-to-declare-state-of-emergency>. Accessed March 23, 2021.

¹³ Sparks, Hayden. "Democratic Texas Mayor Calls Immigration Surge a 'Biden Border Crisis'." The Texan, March 23, 2021. <https://thetexan.news/democratic-texas-mayor-calls-immigration-surge-a-biden-border-crisis/>. Accessed on March 24, 2021.

The Homeland Security Advisory Council, a bipartisan group of leaders from state and local governments, first responder communities, the private sector, and academia, who provide DHS with independent advice, issued a report in November 2019 after the last surge, with recommendations to prevent another crisis in the future. One of their top recommendations was establishing a fund for DHS to have immediate access to funding when a humanitarian crisis develops.¹⁴ During past border surges, DHS struggled to receive timely supplemental funds that were desperately needed to deal with the humanitarian crisis on the southwest border.

Legislative Fix

This legislative proposal would require DHS and federal partners to establish an agile plan to respond to irregular migration surges with benchmarks in place for activation. This would allow DHS to immediately plan for and respond to a border surge before it becomes unsustainable. The fund would allow DHS to access funds to handle immediate resourcing needs to address humanitarian concerns without waiting months for supplemental appropriations from Congress. We expect this to reduce overall costs and protect important homeland security funding from being reprogrammed for surge response purposes.

The required border surge response plan includes:

- Identification of participants and their roles, chain of command, and responsibilities.
- A strategy to enhance security along the border, maximize the use of non-law enforcement personnel to assist with processing, and streamline screening and processing without reducing security.
- Processes to identify and detail surge personnel to the border; request interagency assistance; expand temporary processing and holding capacity quickly; and track metrics that trigger the plan's activation.
- Policies to ensure timely communication and coordination regarding facility capacity and transfer of individuals in custody.
- A strategy to ensure migrants aren't released into the United States if they have COVID-19.
- Intelligence driven analysis that includes border trends, migrant perceptions of U.S. law, tactics used by smugglers, and other relevant information determined necessary by the Secretary.
- A strategy to coordinate with State, Local, and Tribal governments, transportation companies, and NGOs regarding the release of individuals in their jurisdiction for public safety purposes.
- Metric thresholds to activate the plan.
- A mechanism to conduct an after-action review to inform any changes to the plan and notify Congress of any resourcing and authority needs.

Establishes a fund that can only be accessed if the plan is activated, for:

- Replenishing consumables, equipment, and overtime funds
- Expanding temporary DHS processing and holding capacity
- Ensuring timely communication and transportation of individuals in custody between DHS and partner agencies
- Requesting interagency assistance and detailing DHS personnel to the border

Authorizes an initial investment of \$1 billion to be appropriated, requires the maintenance the level of the fund up until 2025, allows the Treasury to invest a portion of the funds for the purpose of compounding interest, and returns the money to the Treasury after 2025.

¹⁴CBP Families and Children Care Panel Final Report, accessed on March 25, 2021, at https://www.dhs.gov/sites/default/files/publications/fccp_final_report_1.pdf